



Montana Nurses Association^{HB}

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Testimony of Don Judge in opposition to House Bill 334 – House Business & Labor Committee January 31, 2011

Madam Chair, members of the Committee, for the record my name is Don Judge and I'm appearing here today on behalf of the Montana Nurses' Association in opposition to House Bill 334. I also want to let the committee know that for the last four years I have served on the Labor-Management Advisory Council which has sought to reduce the costs of workers' compensation for Montana employers while preserving and even enhancing the benefits and access to medical care for injured workers. I am not, however, appearing on behalf of the LMAC nor should any of my remarks be viewed as representing anyone serving on the LMAC other than myself.

We want to acknowledge Representative Reichner's offer to continue to explore amendments to House Bill 334 which may alleviate at least some of our concerns about the bill and its impacts on Montana workers who suffer work-related accidents and injuries. We're willing to discuss alternatives to the current language in HB 334 and we're hopeful that we can find common ground on solutions to our concerns.

Madam Chair, Montana nurses are both health care providers and employees. Some of them are the major, or even exclusive health care providers in rural areas of Montana. They are also health care workers who experience workplace related injuries and exposures to diseases. The health care industry is a dangerous place to work, where strains and sprains, slips and falls often occur while attending to the ill and infirmed. Exposure to viruses, influenza, bacterial infections and a host of communicable diseases is obviously greater in places where those who are afflicted with such ailments congregate. Precluding nurses from receiving appropriate health care, as we believe is proposed in HB 334, not only means that they, as individuals will suffer, but that our health care system in Montana may suffer the loss of these valuable health care professionals.

We are concerned about the provisions in HB 334 which allow the insurer to pick the treating physicians thereby denying nurses the right to use their knowledge about the physicians with whom they work or have professional relationships with when selecting a doctor in whom they have trust— a right that each and every one of us wants to exercise whether we are an injured worker or just an individual in need of health care.

Montana nurses understand that some of the most insidious and life-threatening illnesses have long latency periods. Diseases like asbestoses and related ailments; cancers; heart and lung diseases, pulmonary and other ailments often take years to develop. In its current form, HB 334 appears to deny insurance coverage at exactly the same time complications of such illnesses arise and are in need of treatment. Denying this coverage will likely result in delayed care and when care is available, much more expensive care. Preventing the onset of disease complications is much more cost effective than treating them in their later stages.

Like Bob Worthington, Riley Johnson and perhaps a few others in this room, I have been involved in workers' compensation reform bills since the mid-eighties and as Representative Hunter related to you in his presentation on HB 87, virtually every one of those reforms resulted in restricting access to health care for injured workers, reducing benefits, or both. House Bill 334, if passed in its current form, would result in more of the same.

Where has that past reform gotten us? Well, Montana now has the dubious distinction of employer premium rates that, according to an Oregon study, rank us #1 in the nation while our benefits fall somewhere below the national average. Health Care in our workers' compensation system takes 75 cents of every benefit dollar,

ranking us #1 in the nation where the average is 58 cents. Our injury rate is approximately 150% of the national average, ranking us #2 as the un-safest state in which to work.

It's too bad that Montanan's adopted term limits in the nineties because if some of your predecessors, democrats and republicans alike, were here now they would have to nod their heads when I say that they were assured the reforms they passed would go a long way towards salvaging Montana's workers' compensation system when just the opposite is obviously true.

Perhaps that's why the governor asked for a new approach. One in which a team of employers and workers would sit down over a four year period and delve deeply into the cost drivers of workers' compensation and the benefit structure and present something to the legislature that would address that cost and improve those benefits, treatment and administration of health care. In doing so the administration recognized the successful efforts of a similar commission which developed a plan to take British Columbia, Canada from among the highest employer premium rates in that nation to among the lowest. A similar approach is being used in Oregon, the state that is often touted as a, if not the, leader in workers' compensation systems in the nation. The full measure of the Montana LMAC's work is contained in a bill being carried by Senator Zinke and some of our issues of concern are also addressed in HB 334, although the solutions being offered there are not the same as those proposed in Sen. Zinke's bill.

For example, the claim settlement language adopted by the LMAC required department of labor to review and approve such settlement between injured workers and insurers/employers which we believe is necessary, especially when the worker has no legal representation. HB 334 provides instead that if the department of labor hasn't reviewed the proposed settlements within a 14 day period they are automatically approved without review.

The LMAC proposal provided that the department of labor could designate an individual to intervene early when a worker is injured in order to provide assistance to either keep that injured worker on the job, or get them back to work as soon as possible. That proposal was directly tied to one of the cost-drivers of the system and was proposed to help Montana's small employers who lack resources to do this on their own. HB 334 does not provide authority to the department of labor to do the same.

If HB 334 were to pass in its current form, Montana would have the distinction of providing some of the most restrictive and lowest permanent partial disability benefits in the nation. It would have arguably the hardest claim closure language in the nation with the most restrictive reopening for medical treatment in the nation. It would impose impairment ratings for injured workers who lose the full use of their body at levels which deny value to those losses.

It fails to address, in any meaningful way for workers, the greatest cost-driver to Montana's workers' compensation system... safety, and the costs of injuries and illnesses. In its current form it could be said to actually discourage improved safety on the job -- costs go down solely because benefits to workers are drastically reduced, not because of safer workplaces. HB 334 sends the message that workers may simply be disposable tools for jobs that can be done cheaply and quickly without regard to safety...and with essentially no consequences

There is some irony in those who offer support for this bill thinking that it will preserve medical fees for their members or protect their business against legal action brought by representatives of injured workers. The irony is in this.... the restrictions on provisions of medical care for injured workers will actually result in cost shifting to private insurance, Medicare, bankruptcy and/or charity care. The result of which may well be much deeper

cuts in physician and hospital reimbursements than were proposed by the LMAC. And, because private insurance and Medicare will likely deny paying for claims which they perceive as being workers' compensation related, emergency room visits and charity care along with expensive litigation is the probable result.

It's also ironic that insurers seem so supportive of this legislation, because if fully implemented and if the NCCI suggested lost cost filings savings are fully passed along to Montana employers, the State Fund could lose almost 44% of its premium base and I suspect that private pay carriers will experience much of the same. On the bright side that might mean that there would be significant quality rental space available in the new State Fund building at the Great Northern Center here in Helena. But, based on past experience, I suspect that insurers will do just fine, they always do. My bet is that employers will not see the big reductions they're hoping for, but workers benefits will definitely get reduced.

And let me ask, will Montana employers actually enjoy the benefits of becoming the most restrictive system in the country? The Montana Constitution, in providing exclusive remedy for employers, contemplates a system in which workers who give up the right to sue their employers for work-related injuries and illnesses will be adequately compensated for those injuries and illnesses. Are we willing to risk that the courts may find that the exclusive remedy protections of the Constitution and the quid pro quo have been stretched to the limits, especially as it relates to the failure to provide adequate and timely medical care for injured workers?

For four years I have worked alongside people that I have at times had significant disagreements with. I have listened to the voices of insurers, employers, medical providers, attorneys representing insurers, employers and injured workers, vocational rehabilitation specialists, department of labor and industry staff and consultants hired by the department and representatives of NCCI. I have attempted to think outside of my box, to listen to others and to work on solutions to our expensive system of workers' compensation and our failure to provide adequate benefits for injured workers. I'm still hopeful that our work will be recognized and adopted as a new approach to do something different on workers' compensation reform this time around. Mostly because if we don't it looks like we may be going down the same path of reform we have been following for over twenty years and expecting different results. I believe there is a statement of wisdom about doing the same thing over and over and expecting different results.

HB 334 in its current form would not be good for Montana nurses or their patients. It's not good for injured workers across the board. We hope and we ask that you chart a course to make Montana's workers' compensation system good for both employers and injured workers alike.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Don", written over a circular flourish.

Don Judge